

## **November 5, 2007 - Regular Town Council Meeting**

**At a Regular Meeting of the Town Council of the Town of Middletown, RI held at the Middletown Town Hall on Monday, November 5, 2007 at 7:05 P.M.**

**Council President Paul M. Rodrigues, Presiding**

**Vice Chair Shirley R. Mello**

**Councillor Barbara A. Barrow**

**Councillor Louis P. DiPalma arrives at 7:45 PM**

**Councillor M. Theresa Santos**

**Councillor Edward J. Silveira, Jr.,**

**Councillor Robert J. Sylvia, Members Present**

**ACTING AS A BOARD OF LICENSE COMMISSION**

**Councillor Silveira disqualified himself from acting on the next (5) items of business, #1, 2, 3, 4, 5 due to a possible conflict of interest, business related.**

**1. Continued from October 15, 2007**

**Continued from October 1, 2007**

**Public Hearing (Advertised; Abutters notified)**

**Application of Wiggins Enterprises, Inc., dba The Glass Onion, holder of a Retailer's Class BV Alcoholic Beverage License for premises located at 909 East Main Road, Middletown, to TRANSFER LOCATION of said license to 1258 West Main Road, Middletown.**

**Public Hearing was declared open.**

**Robert M. Silva, Esquire, 1100 Aquidneck Avenue, Attorney for the applicant addressed the Council noting this is a relocation of the current business from East Main Road to 1258 West Main Road. The**

**single-family home on West Main Road will be demolished and the “Glass Onion” restaurant will be built on this location. Mr. Silva noted that there is still an objection to the relocation filed by Attorney Jeremiah Lynch, III on behalf of his client Mr. Kielbasa owner of “The Green and Bright Ideas”. The issue is if the Council is able to entertain this application because of rule 41 - the 200-foot rule. There is a registered Kindergarten on the premise of The Green.**

**Mr. Silva filed a copy of all leases from The Green property, requesting the filings to be marked as Exhibit A, which are on file in the Town Clerk’s office for review.**

**Jeremiah Lynch, III, Esquire, 97 John Clarke Road, represents The Green and Bright Ideas noted there have been a number of attempts on behalf of the applicant to rectify the concerns of his clients. Mr. Lynch believes that the Council does not have jurisdiction to approve this license application.**

**Manny Mello, Beacon Terrace North, expressed concern pertaining to the relocation of the proposed restaurants driveway, noting it will be**

**very dangerous to enter and exit.**

**Council President Rodrigues noted The Glass Onion is a reputable business but does not believe Council has jurisdiction to entertain said transfer.**

**Councillor Sylvia noted that this is a premise issue. He does not want to see a business leave the Town nor does he think that students should be subjected to liquor.**

**Town Solicitor Francis Holbrook reviewed his recommendation entered here:**

**There being no other persons present desiring to be heard on this matter, public hearing was declared closed.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to follow Town Solicitor's recommendation, that the proposed relocation is prohibited by RIGL 3-7-19.**

## **2. Public Hearing (Advertised)**

**Application of EA & EM, LLC, dba Aquidneck Restaurant and Pizzeria holder of a Retailer's Class BV Alcoholic Beverage License for premises located at 27 Aquidneck Avenue, Middletown, to TRANSFER said license to AQ, Inc., dba Aquidneck Restaurant and Pizzeria, for use at the same premises.**

**Public Hearing was declared open.**

**There being no persons present desiring to be heard on this matter, public hearing was declared closed.**

**On motion of Vice Chair Mello, duly seconded, it was voted**

**unanimously to grant said license transfer.**

### **3. Public Hearing (Advertised)**

**Application of Saigon Café, Inc., dba Saigon Café, 823 West Main Road, Middletown, holder of a Retailer's Class BL Alcoholic Beverage License, to UPGRADE said license to a Class BV for use at the same premises.**

**Public Hearing was declared open.**

**There being no persons present desiring to be heard on this matter, public hearing was declared closed.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license upgrade.**

#### **4. Public Hearing (Advertised)**

**Applications received from the following named persons, firms or corporations for RENEWAL of Alcoholic Beverage Licenses for the 2007-2008 licensing year. (See attached list)**

**Public Hearing was declared open.**

**There being no persons present desiring to be heard on this matter, public hearing was declared closed.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license renewals.**

**5. Application of Applebee's Northeast, Inc. dba Applebee's Neighborhood Grill & Bar holder of a Retailer's Class BV Alcoholic Beverage License for premises located at 349 West Main Road,**

**Middletown to TRANSFER said license to Applebee's Restaurants North, LLC dba Applebee's Neighborhood Grill & Bar, for use at the same premises. (Requires advertising for public hearing)**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously receive said application, advertise same for a public hearing to be held at the December 3, 2007 regular meeting of the board.**

## **CONSENT CALENDAR**

**1. Applications received from the following named persons, firms or corporations for RENEWAL of Victualling House Licenses for the 2007-2008 licensing year. (See attached list)**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license renewals.**



**2. Communication of Patricia Heller, Director of Development, Potter League for Animals, re: Appreciation for support.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**3. Communication of Dennis Roy, Chief Executive Officer, East Bay Community Action Program, re: Appreciation for support.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**4. Communication of Michael J. Robinson, Esquire, re: Notice of claim against the Town.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**5. Communication of Tim Woodward, West Main Laundromat, re: Expressing concern of significant increase of Sewer bill.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**6. Communication of Tax Assessor, with enclosures, re: Cancellation of taxes for certain Middletown taxpayers.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**7. Resolution of the Council, re: Authorizing cancellation of taxes**

**for certain Middletown taxpayers.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.**

**8. Communication of Tax Collector, with enclosures, re: Cancellation of taxes for certain Middletown taxpayers.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**9. Resolution of the Council, re: Authorizing cancellation of taxes for certain Middletown taxpayers.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.**

**10. Memorandum of Finance Director, with enclosures, re: Tax Collector's Report for period ending September 30, 2007.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.**

**11. Memorandum of Finance Director, with enclosures, re: Financial Statements for period ending September 30, 2007.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.**

**12. Memorandum of Town Administrator, with enclosure, re: Lease Purchase Agreement for refuse totes.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.**

**13. Resolution of the Council, re: Approval of lease agreement for refuse totes.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.**

## **TOWN COUNCIL**

**Councillor Silveira disqualified himself from acting on the next (8) items of business, #1, 2, 3, 4, 5, 6, 7 & 8 due to a possible conflict of interest, business related.**

**1. Continued from October 15, 2007**

**Continued from October 1, 2007**

**Application of Wiggins Enterprises, Inc., dba Glass Onion, 1258 West Main Road, for Victualling House License for the 2007–2008 licensing year. (NEW)**

**Robert M. Silva, Esquire, 1100 Aquidneck Avenue, representing the applicant requested to withdraw said application without prejudice.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to withdraw said application without prejudice.**

**2. Application of AQ, Inc., dba Aquidneck Restaurant & Pizzeria, 27 Aquidneck Avenue, for Victualling House License for the 2007–2008 licensing year. (NEW)**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license subject to the approvals of the Building Official, the Fire Marshall, Dept. of Public Works and the RI Department of Health.**

**3. Application of 7-Eleven, Inc., dba 7-Eleven #26211J, 939 West Main Road, for a Victualling House License for the 2007-2008 licensing year. (NEW)**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license subject to the approvals of the Building Official, the Fire Marshall, Dept. of Public Works and the RI Department of Health.**

**4. Application of VVS1, Inc., dba Pizza Hollywood, 796 Aquidneck Avenue, for a Victualling House License for the 2007-2008 licensing year. (NEW)**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license subject to the approvals of the Building Official, the Fire Marshall, Dept. of Public Works and the RI Department of Health.**

**5. Application of Newport Catering, Inc., dba Glorious Affairs, 936 Aquidneck Avenue, for a Victualling House License for the 2007-2008 licensing year. (NEW)**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license subject to the approvals of the Building Official, the Fire Marshall, Dept. of Public Works and the RI Department of Health.**

**6. Public Hearing (Advertised)**

**Application of AQ, Inc., dba Aquidneck Restaurant & Pizzeria, 27 Aquidneck Avenue, for Victualling House License – Additional Hours of Operation – for the 2007-2008 licensing year. (NEW)**



**Public Hearing was declared open.**

**There being no persons present desiring to be heard on the matter, public hearing was declared closed.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license.**

## **7. Public Hearing (Advertised)**

**Application of 7-Eleven, Inc., dba 7-Eleven #26211J, 939 West Main Road, for Victualling House License – Additional Hours of Operations – for the 2007-2008 licensing year. (NEW)**

**Public Hearing was declared open.**

**There being no persons present desiring to be heard on the matter, public hearing was declared closed.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license.**

#### **8. Public Hearing (Advertised)**

**Applications received from the following named persons, firms or corporations for RENEWAL of Victualling House Licenses, Additional Hours of Operation, for the 2007-2008 licensing year. (See attached list)**

**Public Hearing was declared open.**

**There being no persons present desiring to be heard on the matter,**

**public hearing was declared closed.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license renewals.**

**9. Applications (2) for Special Events Permits received from the following named persons, firms or corporations: 1) Newport Running Club, 5 mile road race from Newport County YMCA to 2nd Beach and return 2) Julia Mancini, Wedding Ceremony, Dunlap Wheeler Park.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said Special Events Permits.**

**10. Memorandum of Assistance Town Planner, re: Request for 2006 DEM Riparian Restoration Grant award and authorize the Town match.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum and accept said grant award and allocate appropriate resources as to the Town match.**

**11. Resolution of the Council, re: Accepting 2006 DEM Riparian Restoration Grant and authorizing Town matching funds.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.**

**12. Memorandum of Town Administrator, re: 2007 RIDEM Riparian Restoration Grants awarded October 1, 2007.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.**

**13. Resolution of the Council, re: Approval of funding source for 2007 RIDEM Riparian Restoration Grants awarded October 1, 2007.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.**

**14. Communication of Tina Dolen, Executive Director, Aquidneck Island Planning Commission, with enclosures, re: Future disposition of the Navy's Midway Pier property at Greene Lane and Burma Road.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**Tina Dolan, Executive Director, Aquidneck Island Planning Commission, addressed the Council concerning the future disposition of the Navy's Midway Pier property and the adjacent 5.64 acres at Greene Lane and Burma Road. Ms. Dolan noted that this**

parcel would allow for easy access to the bike path. She is seeking approval from the Council to proceed as an advocate for this property noting that the RIDEM will only take the property for the interim. AIPC wants to know if the Town would be willing to eventually accept the property.

Council expressed concern pertaining to property clean up, clearance on the property use and if monies are involved.

On motion of Council President Rodrigues, duly seconded, it was voted unanimously to proceed as an advocate for this property.

15. Communication of John Vitkevich, 119 Hummock Avenue, Portsmouth, RI, re: Requesting a Council resolution of an increased weight limit on the new Sakonnet River Bridge.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

**Mr. Vitkevich, 119 Hummock Avenue, Portsmouth, addressed the Council reviewing his letter and noting 40,000 cars cross the Sakonnet River Bridge daily. Mr. Vitkevich requests the Council to support a resolution requesting the Governor to acquire funding to renovate and expedite the new Sakonnet River Bridge.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to support this resolution.**

**16. Communication of Manual J. Mello, Jr., Beacon Terrace, re: Requests discussion concerning Overflow Storage Facility.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.**

**Manny Mello, Beacon Terrace, addressed the Council noting concern that the Town does not have an Overflow Storage Facility. Mr. Mello urged the Council to locate an area for such a facility.**

**17. Memorandum of Town Administrator, re: Request for replacement of a second vehicle for the Building Department.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.**

**18. Resolution of Council, re: Approving replacement of Building Official vehicles.**

**Town Administrator Gerald Kempen reviewed the process to replace the Building Official vehicles. Mr. Kempen noted that the CIP budget does include one vehicle. Kempen suggests that instead of paying the large repair bill; purchase a second new vehicle with funds that were not used by the Recycling Coordinator.**



**Vice Chair Mello, moved and it was duly seconded, to pass said resolution, motion amended by Councillor DiPalma, duly seconded, to pursue a used vehicle and continued this matter to the November 19, 2007, regular meeting of the Council; Council President Rodrigues, Vice Chair Mello, Councillors Barrow, DiPalma and Santos voted YES to said motion; Councillors Silveira and Sylvia voted NO.**

**19. Memorandum of Town Administrator, with enclosures, re: Surplused Rescue Wagon.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.**

**20. Resolution of the Council, re: Transfer of surplused rescue wagon from the Fire Department to the School Department.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.**

**21. Memorandum of Town Administrator, re: Rhode Island Clean Water Finance Agency - Reallocation of Remaining Balances.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.**

**22. Resolution of the Council, re: Approving reallocation of remaining balances of Clean Water Bonds from RI Clean Water Finance Agency.**

**Town Administrator Kempen noted that this will be a clean up of old remaining bond balances, approximately \$50,000.**

**Manny Mello, Beacon Terrace, questioned bond amounts, total monies spent and where the monies were spent.**

**Finance Director Shawn Brown, responded, that there is no money left in those bonds and he would prepare a schedule showing where the monies were used for the November 19, 2007, regular meeting of the Council.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.**

**23. E-mail communication of Councillor Silveira, with enclosures, re: Discussion of commercial waste haulers (dumpster, business dumpsters) and the current mandatory recycling ordinance, and permitting process.**

**On motion of Vice Chair Mello, duly seconded, it was voted**

**unanimously to receive said E-mail communication.**

**Councillor Silveira noted he had received calls concerning the Garbage and Refuse ordinance. He believes the ordinance should be amended to clarify the permitting process.**

**Vice Chair Mello noted all Garbage and Refuse permitting should be through the Public Works department.**

**Walter Fraizer, 168 Ridgewood Road, addressed the Council noting concern pertaining to the lack of understanding of the recycling process for commercial businesses (commercial business do have to recycle) and the insurance requirement set by the Town.**

**Cheryl Page, Island Rubbish, Jamestown, RI addressed the Council concerning the insurance requirement for refuse haulers within the Town.**

**Council requested that the Town Solicitor Frank Holbrook review and amend the Garbage and Refuse ordinance to be considered at the November 19, 2007 regular meeting of the Council.**

## **PUBLIC FORUM SESSION**

**Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting.**

**No one addressed the Council during this session.**

**Councillor Santos requests everyone to remember November 11th Veterans Day.**

**On motion of Vice Chair Mello, duly seconded, it was voted unanimously to adjourn this meeting at 9:15 P.M.**

**Wendy J.W. Marshall, CMC**

**Council Clerk**